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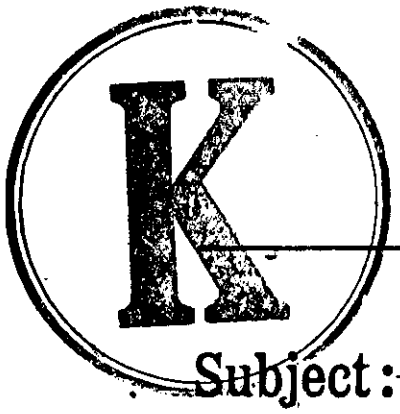

Legal DEPARTMENT

A BRANCH

Subject:—

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Std. Sectt. Slip 21 B c.

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Submitted:

From the petition made to the Secretary, G.D. by Mr. B.P. Nadkarni, a clerk employed by the Medical Council, Bombay, it appears that he was dismissed from service with effect from 16th April 1942 on account of his absence from duty without obtaining the previous permission of the Registrar as required by rule 104 of the Rules made by the Bombay Medical Council under section 19 (2) of the Bombay Medical Act, 1912. The questions for the consideration of the H.L.A. are these:-

(1) Whether under section 5 (2) of the Bombay Medical Act, 1912, the Bombay Medical Council is competent to dismiss Mr. Nadkarni without the previous approval of Government; and

(2) Whether Government on being satisfied that the Bombay Medical Council has abused its power in dismissing Mr. Nadkarni without its approval can interfere in the matter under section 21 of the Bombay Medical Act, 1912.

2. As regards the first question, sub-section (1) of section of the Bombay Medical Act, 1912, the power to appoint a Registrar and a person to act for him vests in the Medical Council, but the order of such appointment requires the previous approval of the Provincial Government. section 16 of the Bombay General Clauses Act, 1904 provides that where, by any Bombay Act, a power to make any appointment is conferred, the unless a different intention appears, the authority having power to make

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the appointment shall have power to suspend or dismissany person appointed by it in exercise of that power. This section does not provide that the power to suspend or dismissshall be exercisable "subject to the previous approval of Government" (Cf. section 21 of the Bombay General Clauses Act, 1904). Consequently under section 5(2) of the Bombay Medical Act, 1912, read with section 16 of the Bombay General Clauses Act, 1904, the Medical Council which appointed Mr. Nadkarni has the power to dismiss him without the approval of Govt. This view finds support from the language employed in sub-section (1) of section 5 of the Act, which specifically provides for dismissal of Registrar with the previous approval of Government. Section 5 (1) inter alia provides that "any order of the Medical Council appointing, granting leave to or dismissing a Registrar [illegible] shall be subject to the previous approval of the Provincial Government." On comparing the provisions of sub-section (2) with those of sub-section (1), it becomes evident that had the Legislature intended that the dismissal of other officersor clerks appointed under sub-section (2) should be "subject to the previous approval of Government" specific provision to that effect would have been made in sub-section (2) also as in sub-section (1) of section 5. It, therefore, becomes clear that the Legislature did not intend that the power of dismissal ofa clerk vesting in the Medical Council should be exercisable subject to the previous approval of the Government. It does not

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It appears from the provisions of section 5 of the Bombay Medical Act, 1912, that although the appointment of clerks requires the previous approval of Government, no such approval would be necessary for their dismissal. It is doubtful whether it is the creation of the post of head clerk or whether the appointment of a particular person to that post that requires the previous approval of Government. But whichever is the case the power to dismiss such servants would seem to vest absolutely in the Medical Council. Consequently the dismissal of Mr. Nadkarni in the present case cannot be considered to be illegal for want of previous approval of Government. No action under section 21 would therefore be competent on the ground that Mr. Nadkarni was dismissed without the previous approval of Government. Whether the Medical Council has abused its powers in dismissing him without any just and proper cause would be a question of fact and no opinion can be expressed without knowing all the facts.

Sd. P.N.M
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Recommencer of Legal Affairs.

U.R. to G.D., No. 7541, dated the 18th September 1942.

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therefore appear that under section 5(2) of the Act, the Medical Council was required to obtain the approval of Govt. to the dismissal of Mr. Nadkarni.

3. As regards the second question since the Medical has, as stated above, power to dismiss Mr. Nadkarni without the previous approval of Government, sec. 21 of the Act cannot be resorted to. It may, however, be stated that section 4 of the Act inter alia provides that all acts of the Medical Council shall be decided by the votes of the majority of the members present at any meeting, the whole number present not being less than eight etc. It is presumed that in pursuance of this provision that Bombay Medical Council in dismissing Mr. Nadkarni has been duly supported by a valid resolution passed to that effect. In the absence of the proper papers, it cannot be said whether a resolution has or has not been passed by the Medical Council dismissing Mr. Nadkarni. If, however, no resolution is passed by the Medical Council dismissing Mr. Nadkarni as required by section 4, it would amount to abuse of power as contemplated by section 21, and it would then be competent for Govt. to take action under that section.

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